Bail Slip

The Appellants/Accused namely 1.Hariram,2)Selvam,3) Ramakrishnan 4)Vadivel were directed to be released on bail as per the order of this Court dated 20.10.2000 in Crl.M.P.No.7556/2000 in Crl.A.No.944/2000.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 24.03.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.A.No.944 of 2000

1.Hariram
2.Selvam
3.Ramakrishnan
4.Vadivel .. Appellants/Accused

Vs.

State rep by
The Superintendent of Police,
Villupuram. .. Respondent/Complainant

Prayer: This appeal has been preferred U/S 374 Cr P C against Judgment dated 26.09.2000,made in S.C.No.211 of 2000, on the file of the Special Judge (Principal Sessions Judge), Villupuram Sessions Division, Villupuram.

For Appellants : Mr.A.N.Thambi Durai
for Mr.A.Thamizharasan

For Respondent : Mr.R.Munniappa Raj,
Government Advocate

JUDGMENT

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This appeal has been preferred against Judgment dated 26.09.2000, in S.C.No.211 of 2000, on the file of the Special Judge (Principal Sessions Judge), Villupuram Sessions Division, Villupuram.

2. The short facts of the prosecution case relevant for the purpose of deciding this appeal are as follows:-

2(a) On 03.09.1998 at about 7.45 pm when P.W.1 & P.w.2 were traveling in a bus from Pondicherry to Vazhuthaoor, A1 got down at

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Pakkiripalayam bus stop, which is one stop ahead of Vazhuthaoor, at that time P.W.2 has stamped A1 which was retaliated by A1 by abusing P.W.2 by his caste and A1 had assaulted P.W.2 with hands on the back and cheek causing simple injury. When this was questioned by P.W.1, A1 to A4 have assaulted P.W.1 with hands causing simple injury and they took both P.W.1 & P.W.2 to their village Pakkiripalayam and some other villagers also bet P.W.1 & P.W.2 and at the intervention of one Gnanasekaran and Sabarinathan P.W.1 & P.W.2 were rescued and sent to their home for Vazhuthaoor and that the incident had occurred on 3.9.1998 at about 7.45 pm P.W.1 preferered a complaint with Kandamangalam police at 11.00 pm on the same day, which was registered by P.W.7 in Cr.No.297/1998 under Section 147, 341, 323 r/w 3(1)(x) of SC/ST (Prevention of Atrocity) Act, 1989.

2(b) The case was taken on file by the learned Judicial Magistrate No.II, Villupuram and on appearance of the accused on summon copies under section 207 of Cr.P.C., were furnished to the accused. Since the case is triable by the Court of Sessions, the Judicial Magistrate had committed the case to the Special Judge (Principal Sessions Judge), Villupuram, under Section 209 of Cr.P.C.

2(c) On appearance of the accused the learned Session judge has framed the charges under Section 3(1)(x) r/w 8(b) of the SC/ST (PA) Act, 1989, against A1 to A4 and also under Section 323 IPC (2 counts). When the charges were explained to the accused they pleaded not guilty. On the side of the prosecution P.W.1 to P.W.7 were examined and Ex.P.1 to Ex.P.7 were marked.

2(d) P.W.1 is an injured witness. According to P.W.1 while he was travelling in a bus from Pondicherry to his village Vazhuthaoor along with P.W.2 and P.W.3-Vellan at Pakkiripalayam bus stop A1 got down from the bus and at that time P.W.2 stepped on the leg of A1. Immediately A1 retaliated by abusing him by caste and assaulted P.W.2 on the cheek and back with hands and that P.W.2 fell down on the ground. Immediately A2 & A3 also assaulted P.W.2 with hands. When P.W.1 intervened A1 to A3 assaulted P.W.1 and also took P.W.1 & P.W.2 to their village Pakkiripalayam and assaulted along with villagers with hands. Gnanasekaran and Sabarinathan intervened and pacified the accused and sent the victim viz. P.W.1 & P.W.2 to their house at about 10.00 pm and that P.W.1 preferred Ex.P.1-complaint with Kandamangalam Police.

2(e) P.W.2 has corroborated the evidence of P.W.1, who is also an injured witness. According to P.W.2 at the time of occurrence all the accused abused by caste and A1 assaulted him with hands on the face and A2 to A4 have assaulted him on the back with hands and all the accused have also assaulted P.W.1 and the accused took P.W.1 & P.W.2 to Pakkiripalayam, where two persons mediated and sent them (P.W.1 & P.W.2) to their village Vazhuthaoor and that a

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complaint was preferred by him and that the police have sent P.W.1 & P.W.2 to Government Hospital in Villupuram.

2(f) P.W.3 is an eye witness. P.W.3 was also in the bus along with P.W.1 & P.W.2 at the time of occurrence. P.W.3 would depose that when A1 got down at Pakkiripalayam bus stop, P.W.2 stepped on the leg of A1 and immediately A1 abused P.W.1 by caste and also assaulted him on the cheek by holding his shirt. When P.W.1 intervened while A1 assaulting P.W.2, at the instance of A1 the other accused have also assaulted P.W.1 with hands and that he also accompanied P.W.1 & P.W.2 to the police station and afterwards he took P.W.1 & P.W.2 to the hospital and admitted them.

2(g) P.W.7 is the Deputy Superintendent of Police, who had registered the complaint preferred by P.W.1 under Cr.No.297/1998 under section 147, 341, 323 IPC r/w 3(1)(x) of SC/ST (PA) Act, 1989. Ex.P.6 is the FIR. After registering the FIR P.W.7 proceeded to the place of occurrence and prepared Ex.P.2-mahazar in the presence of the witness. He has also prepared a rough-sketch Ex.P.7 and afterwards examined the witnesses and recorded their statements. P.W.7 has arrested A1 on 4.9.1998 and remanded him to judicial custody and thereafter he has approached the Tahsildar for community certificate for the accused as well as for P.W.1 and after obtaining the caste certificate, he has examined P.W.5, Tahsildar, who gave the community certificate, and recorded his statement. P.W.7 has arrested A4 on 7.9.1998 and sent him for remand and P.W.7 has also examined P.W.6 and recorded his statement. After completing the investigation, successor of P.W.7, Xavior, DSP, had filed the charge sheet on 4.12.1998 against the accused. He would depose that his successor Xavior has expired.

2(h) P.W.5-Tahsildar would depose that while he was working as Tahsildar at Villupuram, at the request of P.W.7, he had issued Ex.P.3-community certificate for P.W.1 & P.W.2.

2(i) P.W.6 is the Doctor, who had examined P.W.1 on 4.9.1998 at about 3.00 am while he was working as a duty doctor in the Government Hospital at Villupuram, and issued Ex.P.4 copy of the accident register for the contusion P.W.1 had sustained on the left eye-brow measuring 3 x 1 cm and an abrasion on the back with 3 cm diameter. The doctor has opined that the said injury is simple in nature. She has also examined P.W.2 on the same day and issued Ex.P.5, copy of the accident register, for the injury he had sustained on the left eye-brow measuring 3 x 1 cm and also a contusion on the left small finger. The doctor has opined that both the said injuries sustained by P.W.2 are simple in nature.

3. When incriminating circumstances were put to the accused they denied their complicity with the crime. The learned trial judge after

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going through the oral and documentary evidence adduced before him, has come to the conclusion that the guilt against the accused has been proved beyond any reasonable doubt and accordingly convicted A1 under Section 3(1)(x) of SC/ST (PA) Act, 1989, and sentenced A1 to undergo RI for six months and to pay a fine of Rs.100/- with default sentence and convicted A2 to A4 under Section 3(1)(x) r/w 8(b) of SC/ST (PA) Act, 1989, and A2 to A4 were sentenced to undergo six months RI and to pay a fine of Rs.100/- each with default sentence and convicted A1 to A4 under Section 3(1)(x) r/w 8(b) of SC/ST (PA) Act, 1989, and under section 323 IPC (2 counts), and sentenced A1 to A4 to undergo six months RI each and also to pay a fine of Rs.100/- each with default sentence and also sentenced to undergo one month SI under each count for offence under Section 323 IPC (2 counts). The sentences were ordered to run concurrently. Aggrieved by the findings of the learned trial Judge, the accused have preferred this appeal.

4. Now the point for determination in this appeal is whether the prosecution has proved the guilt of the accused under the above said provisions of law to warrant conviction or whether the judgment of the trial Court in S.C.No.211 of 2000 is liable to be set aside for the reasons stated in the memorandum of appeal?

5. The Point:-

5(a) The place of occurrence, according to prosecution, is on the Pondicherry to Vazhuthaoor road as per Ex.P.7-rough sketch. P.W.1 in his evidence would state that while he along with P.W.2 and P.W.3 were travelling in a bus from Pondicherry to Vazhuthaoor, A1 got down at Pakkiripalayam one stop ahead of Vazhuthaoor, and at that time P.W.2 has stamped on the leg of A1, who got infuriated and abused P.W.2 by his caste and also assaulted P.W.2 on his cheek and on the back with hands and pushed him down on the ground and A2 & A3 also assaulted P.W.2. When P.W.1 intervened A1 to A3 also assaulted P.W.1 with hands causing simple injury and that they were taken to the village of the accused at Pakkiripalayam and villagers have also assaulted them and that the mediators Gnanaprakasam and Sabarinathan have pacified all the accused and sent P.W.1 & P.W.2 to their house. But unfortunately neither Gnanaprakasam nor Sabarinathan has been examined as a prosecution witnesses. There is no overtact attributed to A4 by P.W.1. But the learned trial judge has also convicted A4.

5(b) P.W.2 would corroborate the evidence of P.W.1. He would also state that after the occurrence at the bus stand at Pakkiripalayam, the accused have taken both P.W.1 & P.W.2 to their village and the villagers at Pakkiripalayam also assaulted both P.W.1 & P.W.2 with hands. Before the Doctor, P.W.6, who had examined both P.W.1 & P.W.2 after the occurrence at Government Hospital at Villupuram on 4.9.1998 at about 3.00 am in the early morning, would depose before the trial Court that both P.W.1 & P.W.2 have informed

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her that five known persons have assaulted them with stone and hands. But both P.W.1 & P.W.2 have not stated in their evidence that they were also assaulted by stone by five known persons. The only eye witness examined on the side of the prosecution is P.W.3. Both P.W.1 & P.W.2 claimed that P.W.3-Vellan has also accompanied them in the bus on the date of occurrence from Pondicherry to Vazhuthaoor. But in Ex.P.1-complaint, Vellan's name does not find a place. P.W.3 has also informed that the occurrence had taken place at Pakkiripallayam bus stop, but he has not stated that after the occurrence P.W.1 & P.W.2 were taken by the accused to Pakkiripalayam. P.W.3 has also not deposed that P.W.1 & P.W.2 were assaulted by A1 by holding his shirt. But the said shirt of P.W.2 was not recovered and produced by the prosecution in this case. P.W.3 in his evidence would go a further step to say that he only admitted P.W.1 & P.W.2 in the Government Hospital at Villupuram. But P.W.6, the doctor, has not stated that P.W.1 & P.W.2 were brought by P.W.3, and he deposed that they were admitted in the Government hospital by police memo.

5(c) P.W.7, Investigation Officer, would state in his cross-examination that through investigation he came to know that occurrence had occurred in the bus. P.W.7's evidence regarding the place of occurrence is diametrically opposite to Ex.P.7-rough sketch, where the place of occurrence has been shown as on the Pondicherry to Vazhuthaoor road near Vinayagar and Murugar temple. But in Ex.P.1-complaint the place of occurrence has been stated as Pakkiripalayam bus stop. Both P.W.1 & P.W.2 would depose that they were also assaulted by the villagers at Pakkiripalayam. But no specific overtact has been attributed against A4. P.W.1 in the cross-examination has stated that even in the complaint he had stated P.W.3-Vellan also accompanied him in the bus and he was present at the time of occurrence, whereas in Ex.P.1 there is no reference at all about the presence of Vellan at the time of occurrence and in the place of occurrence. Under such circumstances, the cloud cast upon the prosecution case inures to the benefit of the accused. I am of the view that all the accused shall be acquitted from their respective charges levelled against them. Point is answered accordingly.

6. In the result, the appeal is allowed and the conviction and sentence imposed by the learned trial judge in S.C.No.211 of 2000 on the file of the Special Judge (Principal Sessions Judge), Villupuram

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Sessions Division, Villupuram, is set aside and the accused are acquitted from all the charges levelled against them. Fine amount if any paid by the accused are to be returned to them. Bail bands of the accused shall stand cancelled.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

ssv

To

1.The Special Judge (Principal Sessions Judge),
Villupuram Sessions Division, Villupuram.

2.The Chief Judicial Magistrate, Villupuram.

3.The Director General of Police,
Chennai-4.

4.The District Collector,
Villupuram.

5.The Superintendent of Police, Villupuram.

6.The Public Prosecutor, High Court, Madras.

+1cc to Mr.A.Thamizharasan, Advocate Sr 18707

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km/28.3.

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